

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-220561

DATE: January 23, 1986

MATTER OF: K. L. Conwell Corporation

## DIGEST:

Where the bid opening officer receives a hand-carried bid after declaring the arrival of the 10:30 a.m. bid opening time as shown on the bid opening room clock, but at 10:29 a.m. according to a recorded telephonic time report, the agency properly rejected the bid as late. The bid opening officer's declaration is determinative of lateness unless shown to be unreasonable under the circumstances

K. L. Conwell Corporation (Conwell) protests the rejection of its bid as late under invitation for bids (IFB) No. F29650-85-B0017 issued by Kirtland Air Force Base, New Mexico (Air Force) for the renovation of the interior and addition to the Officers' Club. Conwell contends that it should be awarded the contract because its low bid was in government hands one minute prior to the deadline for bids.

The protest is denied.

The IFB, as amended, required that bids be submitted by 10:30 a.m., August 23, 1985, to Room 100, Building 499, Kirtland Contracting Center. The Air Force states that at approximately 10:20 a.m., on August 23, 1985, there were no bids in the bid depository in room 100, but minutes later a Flinchum Construction Co. representative hand-carried a sealed bid to the bid opening room, located close to the depository room. The bid opening officer states that she announced, by the clock in the bid opening room, that it was 10:30 a.m., the time set for bid opening by the IFB, and that no further hand-carried bids would be accepted.

The Air Force states that a Conwell representative appeared in the doorway of the bid opening room at 10:32 a.m., as shown on the clock in the bid opening room, while Flinchum's bid was being read. Seeing that bid opening was in progress, he threw an envelope to the ceiling near the bid depository room. The envelope was picked up by an Air Force employee who was informed by the Conwell representative that it was a bid. Another employee in the bid

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depository room recorded the time of "10:29 a.m." on the envelope and signed it after calling a bank recording for the time because the time/date stamp machine in the bid depository room was out of order. The Conwell representative then accompanied an Air Force employee to the bid opening room where Conwell's bid envelope was presented to the bid opening officer. After noting the time of "10:29 a.m." on the envelope, the bid opening officer opened and read Conwell's bid. Subsequently, the Air Force rejected Conwell's bid as late because it was delivered after bid opening had commenced.

Conwell contends that under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.304-1(c) (1984), the only acceptable evidence to determine the time of receipt of its bid is the time of "10:29 a.m." that is recorded on its bid envelope and that the bid opening officer's interpretation of the correct time is irrelevant. Conwell also states, and the Air Force has not denied, that on a subsequent occasion when it delivered a bid to the same bid depository room, the Air Force employee again called the bank recording to determine the time of receipt because the time/date stamp machine was still out of order.

As a general rule, a bidder is responsible for delivering its bid to the proper place at the proper time. Late bids may be considered only as provided for in the solicitation. The late bid provision incorporated in the IFB, found at 48 C.F.R. § 52.214-7 (which is identical to FAR § 14.304-1), applies to bids sent by mail. In this case, Conwell hand-carried its bid, so the IFB provision does not apply. Consolidated Marketing Network, Inc., B-217256, Mar. 21, 1985, 85-1 CPD ¶ 330; Chemical Waste Management, Inc., B-215382, Sept. 10, 1984, 84-2 CPD ¶ 274. Moreover, contrary to Conwell's contention, nothing in the solicitation or in federal regulations or decisions of our Office require that the timely receipt of hand-carried bids be proven only by a time-date stamp or other documentary evidence maintained by the government installation. Instead, where the issue is whether a hand-carried bid is timely received, all relevant evidence in the record may be considered. All-States Railroad Contracting, Inc., B-216048.2, Feb. 11, 1985, 85-1 CPD ¶ 174.

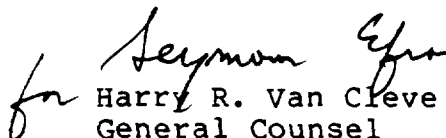
The record indicates that the Conwell representative arrived with its bid either one minute prior to or two minutes after the time set for bid opening. Thus, the question raised for consideration is who determines that the correct time set for bid opening has arrived. Under

FAR, 48 C.F.R. § 14.402-1(a), the bid opening officer must decide when the time set for opening bids has arrived and must inform those present of that decision. That section also requires the bid opening officer to personally and publicly open all bids received before that time.

The bid opening officer used the clock in the bid opening room to determine the time set for bid opening. The bid opening officer's declaration of bid opening time is determinative of lateness unless it is shown to be unreasonable under the circumstances. See B-164625, July 11, 1968 (a bid opening officer did not abuse his authority where he declared bid opening based on the clock in the bid opening room, later shown to be two minutes faster than a telephonic time report); see also Blount Brothers Corp., B-212788, Oct. 31, 1983, 83-2 CPD ¶ 521.

Aside from the telephonic report, the record contains no evidence, and Conwell does not allege, that the bid opening officer acted unreasonably in declaring bid opening based on the bid opening room's clock. The difference of a very few minutes between that clock and telephonic report is not sufficient in itself to render the declaration unreasonable. See B-164625, supra. Although Conwell argues that the opening of its bid demonstrated the Air Force's belief that its bid was timely received, and therefore its bid must be accepted, we have held that the opening of a bid does not mandate its consideration. Chestnut Hill Construction, Inc., B-216891, Apr. 18, 1985, 85-1 CPD ¶ 443.

The protest therefore is denied.

  
for Harry R. Van Cleve  
General Counsel